

# The Solicitors' Journal



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# THE SOLICITORS' JOURNAL



VOLUME 103  
NUMBER 2

## CURRENT TOPICS

### The Preliminary Examination

THE correspondence in *The Times* which was begun by Mr. CHRISTOPHER SHAWCROSS, Q.C., before Christmas on the subject of the preliminary examination before magistrates appears to have run its course. Mr. Shawcross suggested that it would be sufficient if an accused person were supplied with verified statements of the prosecution witnesses and with certified copies of documents and that he should then be given the option to demand a preliminary hearing or to proceed straight to trial. Ten years ago the Departmental Committee on Depositions, in their Report (Cmd. 7639), did not recommend any radical change, and in our opinion nothing which has been written in the course of the correspondence is of sufficient strength to justify reopening the subject. As Mr. LANCE E. BARKER reminded us in his letter to *The Times*, written statements made to the police and oral testimony in the witness box do not always coincide. It is not enough in our view for a person accused of a crime for which he can be tried only on indictment merely to have the option to demand a preliminary examination. It would certainly be wrong in the case of a defendant who is not legally represented, and it seems to us that it would be hardly practicable to draw a distinction between those who are represented and those who are not. Nevertheless, there is a great deal of waste involved. The greatest single contribution which could be made towards reducing this waste would be to extend the number of offences triable summarily with the consent of the accused, particularly breaking and entering where comparatively small amounts of money or goods are involved. There are recommendations of the Departmental Committee which could make substantial contributions. That the preliminary examination is sometimes regarded as a formality is in part due to the readiness of some magistrates to commit for trial where the evidence is so slender that no reasonable jury could convict. Reform and improvement of the detail is necessary and overdue, but we believe that the preliminary examination in principle and substantially in its present form is an important bulwark of liberty.

### County Court Rules Amended

As foreshadowed at p. 943 of our issue of 27th December, County Court Rules have now been made to give effect to the Maintenance Orders Act, 1958, in the county courts. The County Court (Amendment) Rules, 1958, S.I. 1958 No. 2226

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(L. 17), come into operation on 16th February next, the date fixed for the Act to come into force, and Pt. I of the new rules prescribes the relevant procedure and forms for obtaining the registration of a maintenance order in a magistrates' court and for applications for attachment of earnings orders. These provisions take the form of a new r. 17 added to Ord. 46. Part II of the new rules effects a miscellany of amendments, largely minor, to the general County Court Rules. These, too, do not become operative until 16th February. Their principal objects are summarised in the explanatory note to the new rules as follows: (a) reducing and restating the days on which the court offices are to be closed; (b) enabling a third-party notice to be served in the same manner as an ordinary summons; (c) requiring an application for leave to administer interrogatories to be accompanied by the interrogatories proposed; (d) providing that an application for a declaration that a landlord had unreasonably refused his consent to an assignment or sub-letting shall be made by originating application and that the respondent in such a case (and in the case of an application under s. 17 of the Married Women's Property Act, 1882) shall file an answer; (e) providing for the exercise by the registrar of the court's jurisdiction under the Solicitors Act, 1957; and (f) making alterations for the purposes of the Agriculture Act, 1958.

### Recruits for the Profession: Scottish and American Problems

IN England, neither the quantity nor the quality of the human material seeking a legal career has yet given cause for serious alarm, although prophets have not been lacking who foresee a decline in both. Scottish concern, it appears, is with the shortage in number of legal apprentices, believed to be due to such causes as inadequate salaries, holidays, time off for study and personal supervision by partners. The Scottish Association of Law Students and Apprentices is to investigate the "long dissatisfaction with conditions in some legal offices" by issuing a questionnaire to all law apprentices in Edinburgh covering these matters (*The Times*, 22nd December). Complaints of this nature are certainly not unknown in England, but as yet do not seem to have led to any perceptible diminution in the annual flow of candidates entering articles. In the United States the PRESIDENT of the American Bar Association, writing in the December issue of the Association's *Journal*, expresses uneasiness at the competing attractions of science as a career in present conditions. The full impact of this, in his opinion, has not yet been felt, but it is evident that it is particularly in the sphere of quality of entrants that anxiety is entertained. The Board of Governors of the Association at the beginning of November authorised the institution of a programme to accelerate the recruitment of law students with emphasis on ability: this largely consists of increasing the number of "prelaw counsellors" in "undergraduate institutions of higher learning." The function of the prelaw counsellors is to give advice to students if they are interested in or are considering the legal profession as a career, and each will be backed by an outstanding member of the legal profession to assist and collaborate with him in his contacts with members of the student body interested in law as a career. Other activities, including the organisation of "prelaw clubs" and vocational conferences, are contemplated. Are we in England thinking ahead in this way?

### Automatism: The Burden of Proof

THE possibility of the accused relying on the fact that, at the time of committing the offence, he was in a state of automatism, was examined by the Divisional Court in *Hill v. Baxter* [1958] 1 Q.B. 227. One of the points considered by their lordships was the onus of proof where this defence is raised. DEVLIN, J., was satisfied that even in cases in which liability depends upon full proof of *mens rea* it is not open to the defence to rely upon automatism without providing some evidence of it. The accused should adduce evidence which shows that his irrational conduct was due to some cause other than disease of the mind, but where it amounts to insanity in the legal sense his lordship found that it is well established that the burden of proof would start with and remain throughout upon the defence. This important decision has since been considered by the New Zealand Court of Appeal in *R. v. Cottle* [1958] N.Z.L.R. 999. In that case GRESSON, P., reviewed all the cases touching upon the defence of automatism and found that *Hill v. Baxter*, *supra*, was authority for saying that where "automatism is advanced by an accused as negating intent, or as showing him to have acted without any volition, the onus is no more than to provide some evidence upon which a finding of automatism could be based . . . Once that is done, there comes into operation the overall onus upon the prosecution . . . to prove the guilt of the accused . . ." His lordship agreed with Devlin, J., that there would be great practical advantage if the burden of proof in cases of automatism was the same as in the case of insanity, although he added the possible qualification that this should only be true when the case of automatism approximates to insanity. In the course of both judgments it was confirmed that as the law now stands insanity is the only matter of defence in which the burden of proof has been held to be completely shifted.

### Short Weight

THE recent contribution by Mr. R. BILLINGS, Chief Inspector of Weights and Measures for Plymouth, to the correspondence column of *The Times* (30th December) has succeeded in raising the dust (coal dust, of course). He suggested "that in the retail sale of coal, coke and other solid fuel the amount the consumer gets depends largely on the 'luck of the draw' of the container sack, or upon an estimation of its weight." In the case of retail sales of paraffin Mr. Billings maintains that they are conducted "in such a primitive manner by use of simple measures that the customer is almost certain to suffer deficiencies of about eight per cent. on all deliveries." However, as many people have since pointed out, the coal merchant, at least, is subject to special statutory control and inspection by reason of certain of the provisions of the Weights and Measures Act, 1889, and byelaws made under them. For example, s. 29 empowers inspectors of weights and measures or officers appointed by the local authority to "weigh any load, sack or other less quantity of coal" found in any shop or on any vehicle or in the course of delivery to a purchaser. If it is difficult to see how, without greatly increasing distribution costs, further legislation could ensure that the purchaser of coal receives correct weight, it may be that Parliament should examine the position with regard to the sale of liquid fuel.

## "TREBLE THE TAX WHICH HE OUGHT TO BE CHARGED"

THE decision of Diplock, J., in *Inland Revenue Commissioners v. Hinchy* [1959] 2 W.L.R. 32; *post*, p. 35—unless reversed on appeal or nullified by legislation—may well prove to be one of the most important decisions on income tax penalties which has been seen for a long time, since it upsets an "absurd and unjust" construction of s. 25 (3) of the Income Tax Act, 1952, and its predecessors, which has been widely (though not uniformly) accepted since the case of *A.-G. v. Till* [1910] A.C. 50.

Income tax and surtax penalties are many and various, numbering some fifty-six in the Income Tax Act, 1952, alone; while the system generally has been severely criticised by both the Income Tax Codification Committee (Cmd. 5131) and the Royal Commission on the Taxation of Profits and Income (Cmd. 9474). The Codification Committee pointed out that "there is at present no grading of penalties according to the gravity of the offence" and the Royal Commission "that there should be a rationalisation of the amounts involved, whether in penalties or penal duties (the distinction between which should be abolished) . . . for it is obvious that there may be cases in which a liability for treble the amount of tax properly due is altogether excessive in relation to the offence committed."

Offending taxpayers may be divided roughly into two main classes: those who have committed fraud or been guilty of wilful default, and those whose errors or omissions stem from innocence, ignorance or minor negligence. In the case of the lesser offenders, the penalty enactment most frequently invoked by the Inland Revenue is s. 25 (3) of the Income Tax Act, 1952, which provides that a person who neglects, refuses or makes delay in delivering a true and correct return, etc., shall "(a) if proceeded against by action in any court, forfeit the sum of twenty pounds and treble the tax which he ought to be charged under this Act; or (b) if proceeded against before the General Commissioners, forfeit a sum *not exceeding* twenty pounds and treble the tax which he ought to be charged under this Act . . ."

### Quantum of penalties

Two standard text-books express opposite views as to the quantum of penalties involved in the words "treble the tax which he ought to be charged." Konstam on Income Tax (12th ed., chap. 17, para. 383) states that the words "mean, presumably, treble the tax which [the taxpayer] ought to be charged in respect of the source of income which should have been correctly included in the return." Simon's Income Tax (2nd ed., vol. 1, p. 290, para. 417), on the other hand, states that "where a section specifies treble the tax which a person ought to be charged under this Act, only the whole duty chargeable by direct assessment is taken as the basis of calculation, [but] the tax on any income declared is included in the amount to be trebled as well as the item or items omitted. Thus, the greater a person's income, the greater the penalty provided for the same actual omission." Simon's Service Volume (vol. 1, para. 499f), however, states the position in different terms. It says: "The *Revenue* interpret the phrase 'which he ought to be charged' as meaning the whole of the tax directly assessable on the taxpayer for the year of offence even though the amount of tax evaded is quite small . . . The omission of a small amount of bank interest carries the same penalty as the omission of many thousands of pounds of business profits."

### A.-G. v. Till

The Inland Revenue's interpretation of s. 25 (3) is based on views expressed by the Court of Appeal in *A.-G. v. Till*, *supra*. That case concerned the recovery of a penalty of £50 under s. 55 of the Income Tax Act, 1842, which provided that any person who refused or neglected to deliver any list, declaration or statement "as aforesaid" should be liable to a penalty of £50 if prosecuted in any of Her Majesty's courts, or if proceeded against before the Commissioners, should forfeit a sum not exceeding £20 and "treble the duty at which such person ought to be charged by virtue of this Act . . ." The point to be decided by the House of Lords was whether this section applied where there was a failure to render a true and correct return as well as where there was a non-delivery of a return, and the House, overruling the Court of Appeal, decided that it did so apply. In the Court of Appeal, however, Cozens-Hardy, M.R., and Fletcher Moulton, L.J., had said *obiter* that, where the penalty was exigible before the Commissioners, the words "treble the duty at which such person ought to be charged" meant "three times the whole of the tax payable by that person" ([1909] 1 K.B., at pp. 700, 702). In the House of Lords, their lordships expressed no dissent from this view, but as Diplock, J., has since said, it was not necessary for them to do so since the point did not arise.

Section 25 (3) has thus been construed by the Inland Revenue as meaning that they are entitled to a maximum penalty, under the subsection, of £20 plus three times the total tax chargeable by direct assessment (i.e., excluding tax deducted from dividends, interest, etc.), in addition to the normal duty. And the Income Tax Codification Committee, in para. 173 of their report (Cmd. 5131), accepted this view and stated that the tax to be trebled was "the *whole* amount of [the] *proper* tax." The case of *Inland Revenue Commissioners v. Hinchy*, *supra*, now shows this view to be wrong.

### Facts in Hinchy's case

The taxpayer had a Post Office Savings Bank account which, for the year ended 5th April, 1952, earned £51 5s. 9d. interest. For reasons which are not very material, he included only £18 6s. 0d. of this amount in his return of income for the year 1952-53, but the understatement was discovered when a return of the correct amount was delivered by the Post Office under s. 29 of the Income Tax Act, 1952, and on 13th November, 1953, an additional first assessment was made on the taxpayer in respect of the £32 19s. 0d. understated, the total tax on which was £14 5s. 0d. On 13th June, 1956, the Commissioners of Inland Revenue issued a writ against him claiming, under s. 25 (3) (a) of the Act of 1952, the fixed penalty of £20 and "treble the tax which he ought to be charged under this Act," which amounted to £418 14s. 6d., being three times the taxpayer's total tax of £139 11s. 6d., including the £14 5s. 0d., for the year 1952-53. At the date of the issue of the writ, assessments had been made on the taxpayer in respect of all the tax to which he was liable for the year 1952-53.

Diplock, J., said that if the Crown's construction of the words "the tax which he ought to be charged under this Act" were right, it meant that a person with an income which rendered him liable to tax and surtax of £20,000 in the year who, by mistake, understated by £1 or less the amount of his income from one source, or gave the amount correctly but misdescribed the source, or indeed overstated his income by

an amount however large or small, would be liable to a penalty of £60,020. If this was what Parliament meant by s. 25 (3) he must, of course, apply it accordingly, but the consequences seemed to be "absurd and unjust," and if there was some other possible construction consistent with the words of the subsection which led to results less absurd and unjust, he should adopt it. It was to be noted that the expression used in the subsection was "ought to be charged," not "ought to have been charged." A reasonable interpretation of that expression was that it referred to the tax to which the taxpayer ought to be charged or duly assessed, but to which he had not been charged or duly assessed by reason of the default.

#### "Treble the amount of the difference . . ."

His lordship said that the phraseology of s. 25 (3) was to be contrasted with that of s. 48 (1), which provides that where a person who ought to be charged with tax is not duly assessed and charged by reason that he has been guilty of one of four kinds of fraudulent conduct set out in the subsection, such person is to be assessed and charged treble the amount of the charge which ought to have been made upon him (so that the penalty equals double tax). Provided, however, "that if any charge has been made, but that charge is less than the charge which ought to have been made, such person shall be assessed and charged, over and above the former charge, *treble the amount of the difference* between the charge which was made and the charge which ought to have been made, such amount to be added to the assessment."

It seemed to the learned judge that s. 48 expressed in clearer and lengthier language what was intended to be conveyed by the elliptical expression "the tax which he ought to be charged" in s. 25 (3), but this construction made it necessary to determine at what point of time one must ascertain the amount of tax which ought to be charged. The answer must, he thought, be the date at which proceedings were brought before the court or the General Commissioners. He was supported in this view by the provisions of s. 55 of the Act of 1952, which prohibit proceedings being brought if the omission or wrong statement has been remedied before the proceedings are started, but if the proceedings are started before the matter has been remedied, leaves it to the discretion of the General Commissioners or the court, as the case may be, whether the proceedings are then stayed. In *Hinchy's* case the proceedings were started after the defendant had been charged with all the tax for which he was liable. There was, therefore, at the date of the proceedings, no tax remaining on which he ought to be charged under the Act, and the only amount recoverable under s. 25 (3) in that case was the fixed penalty of £20.

#### Effect of the decision

The new decision, if it remains undisturbed, can hardly be other than a bitter pill for the Inland Revenue, whose present practice indicates a more severe attitude in the calculation of penalties. Thus, the Report of the Commissioners of Inland Revenue for the year ended 31st March, 1957, shows that the number of back duty cases dealt with in that year (other than small cases settled by district inspectors locally) amounted to 15,511, as compared with 18,144 in 1954, whereas the penalties included in total tax rose by nearly £2m.

In back duty cases the maximum claim which can be put forward by the Inland Revenue consists of the tax which can be collected on assessments which are within the time limit (except in case of fraud or wilful default) and the penalties for which proceedings can be taken. On the previous construction of s. 25 (3) and some similarly worded provisions, it will be readily seen that such a claim could soon assume gigantic proportions. In practice, however, maximum penalties are rarely exacted except in very grave cases, but the heavy penalties which could be invoked operated as a powerful weapon in the hands of the authorities. Under s. 500 of the Income Tax Act, 1952, the Commissioners of Inland Revenue have power to mitigate penalties and usually do so where the taxpayer is prepared to make full restitution of the tax lost over all years (including years outside the immediately preceding six years).

Where the Inland Revenue discover the default, a sum consisting of back duty, compound interest, and mitigated penalties is accepted in consideration of no proceedings for the recovery of penalties being taken against the taxpayer—a procedure which has been approved by the court in *Inland Revenue Commissioners v. Richards* (1950), 33 Tax Cas. 1, and in *A.-G. v. Johnstone* (1926), 10 Tax Cas. 758. Where the taxpayer himself makes the disclosure, a somewhat better settlement may be possible from his point of view, or it may be possible to avoid penalties altogether, according to the degree of culpability involved and the skill with which the case is handled by the taxpayer and his advisers.

The decision in *Inland Revenue Commissioners v. Hinchy*, *supra*, will clearly pose a problem for the Inland Revenue in its difficult task of collecting back duty, but it is to be hoped that if amending legislation is introduced it will be of a comprehensive character which will implement the recommendations of the Royal Commission, *supra*, since a return to a position which admits of heavier penalties for negligence of a minor order than for fraud or wilful default would be ludicrous.

K. B. E.

### "THE SOLICITORS' JOURNAL," 8th JANUARY, 1859

On the 8th January, 1859, "Current Topics" first appeared in THE SOLICITORS' JOURNAL. The feature has gone on ever since. This was the first topic: "Now that Term time is coming on again, the inconvenient condition of our courts and their scattered localities will call forth fresh complaints from both branches of the profession. The shifts to which our judges are put in order to get through business with their present utterly inadequate accommodation are so scandalous to the public that the Government feel the necessity of doing something; and the great object now is to take care that the course finally taken is the right one . . . It behoves solicitors both in town and country to use their just influence . . . to support the Incorporated Law Society in the effort now making for a concentration of our law courts and offices in a locality convenient for the purpose . . . Counsel are no doubt much inconvenienced by the present system;

suitors suffer annoyance and sometimes substantial loss; but solicitors suffer far more, for they have to bear the reproach of absent counsel and disappointed clients, and are themselves constantly harassed by the expense, fatigue and annoyance entailed by a dispersion of business incredible to all but those who have to conduct its practical details. Country solicitors whom railway accommodation brings to London in a way never dreamed of some years back are peculiarly inconvenienced by a state of things which gives them as much travelling in London to transact their business as it takes to bring them from the country to King's Cross or Euston Square; and to them a central set of courts and offices, near which the chambers of the London solicitors would soon accumulate, would be an enormous gain. Let not the chance of this great advantage be lost by any apathy on our part."

## MEDICAL PARTNERSHIPS—II

### MEDICAL PARTNERSHIPS OUTSIDE THE NATIONAL HEALTH SERVICE

If on being consulted by a general medical practitioner you find that he is carrying on an entirely private practice outside the National Health Service Acts, 1946 and 1949, different considerations apply from those considered last week in relation to partnerships within the National Health Service. Firstly, let us suppose that, in this particular case, one has been instructed by a client who is the partner to be admitted and not the partner who is offering the partnership. The most important step is to instruct one's client to employ an accountant conversant with medical accounts, to investigate the accounts and books of the practice. The reason is that many seemingly prosperous private practices are composed of a few elderly patients who are often visited every day and pay large fees. Obviously, such a practice should be avoided, as when these lucrative patients die, then there is no goodwill left. The larger the number of patients, naturally, the better the practice, and only an accountant conversant with medical accounts can give one a proper analysis of the practice into which your client proposes to enter.

The form of the partnership deed and the various articles to be inserted vary little from those to be inserted in the partnership deed for practitioners practising under the National Health Service Act, 1946, except for those articles which deal with the buying and selling of the goodwill. The same principles apply, namely, that a life partnership, terminable merely on death, retirement or expulsion, with a proper restriction clause, is the only partnership worth entering into.

#### Purchase price

The purchase price to be paid is the most important point to consider. One cannot, in these days, state categorically that there is a usual rate which is paid, but it can be stated with some certainty that the purchase price should be between one year's purchase and two years' purchase of the share to be purchased, based on the average of the gross receipts for the previous three years prior to such purchase. Owing to the difficulty of obtaining a partnership under the National Health Service Act, 1946, practitioners have rather tended to pay higher prices for shares in private practices than their true value. Naturally, in advising one's client what is a reasonable purchase price, one must be guided by the accountant's report and, again, the number of patients, the locality of the practice and any other relevant factors must be considered.

Having considered and decided what is a reasonable purchase price, the next consideration relates to the question of further buying and selling of the shares in the goodwill of the partnership. The same difficulties arise in buying and selling of shares in private medical partnerships as in buying and selling shares in all professional partnerships in these days, namely, that it is difficult to find a junior partner who has capital to pay for his share. In this particular instance, an added difficulty is that there are no insurance companies or similar institutions prepared to lend on the security of a share in a private medical practice. This means that the field of persons able to enter into private practice is limited considerably and, further, that there is no sense in providing for payments out of large sums on death, retirement or expulsion if the continuing or surviving partner has little financial backing. Having considered the above, one should base further purchases at a rate certainly not higher than two years' purchase and preferably near one and one-third of a

year's purchase. If the practice is large and growing then, to be on the safe side, one could limit the figure to be paid out. The purchase of shares on death, retirement or expulsion can either be compulsory or optional. Certainly in the case of death this should be compulsory, as it is extremely difficult for a widow or personal representatives to negotiate the sale of a share and much simpler for the surviving partner to do so. It is submitted that compulsory purchase on retirement and expulsion is also far more satisfactory as the retiring partner knows his position, and the continuing partner is then in a better position to choose his successor. In the case of expulsion for any other reason than incapacity, the purchase price payable is usually halved. In drafting the retirement clause, it is important to make certain that the senior partner or partners cannot retire for a certain period, so that the incoming partner does have a fair introduction for the money he has paid for his original share.

It is often found that practitioners hold appointments which are not transferable on their death or retirement and there should be an overall provision that, in calculating the gross receipts to fix the purchase price, the remuneration from any non-transferable appointments should not be taken into account.

#### Common-form articles

I should like here to refer to a few articles which are common to articles of partnerships whether drawn between general medical practitioners practising within or without the National Health Service.

1. There should be a provision dealing with the position if there is a further emergency and partners are called up for national service. Considerable hardship was caused to many doctors who were called up in the last war in cases where there was no such provision in their articles of partnership. The fairest method found in the last war, in the majority of cases, was that if a partner was called up he paid into the partnership account his pay and family allowances, and continued to draw his share of the profits. The cost of any assistant employed should be paid for out of partnership funds and there should be an overall provision that during such absence such partner could not be expelled for not undertaking his share of work in the partnership. The reason why allowances other than family allowances are not paid into partnership funds is that they are usually paid to a serviceman to meet some particular expense.

2. An article should be inserted covering temporary incapacity. There are many views as to the form that this article should take. The most usual form, and the form found most satisfactory, is that, if a partner is incapacitated or absent, the other partners have the right immediately to employ a *locum tenens* at his expense. This may seem rather stringent, but it gives the other partner an extremely good remedy if he is faced with a practitioner prone to short illnesses.

3. A partner should be obliged to belong to the Medical Defence Union or Medical Protection Society or some similar body and should covenant to remain a member, or, in the case of personal representatives, a representative member for six years after he ceases to be a partner. The reason for this is that, under the terms of these bodies, one must be in membership both at the date of the commission of any negligent act and when proceedings are commenced. The

period should be six not three years as there are still some actions which can be brought within the longer period.

4. The usual arbitration clause should be included.

5. It should be provided that the costs of the preparation of the articles of partnership should be paid for out of partnership funds as they are costly, and, if this provision is inserted, then accountants can usually obtain all these costs as an expense for income tax purposes.

#### Provisions concerning dissolutions

I prefer a partnership for joint lives with no right of dissolution. However, sometimes, in view of the circumstances of the partnership—whether it be a National Health Service partnership or a purely private partnership—owing to disagreements, there must inevitably be a dissolution by mutual agreement. As there is no right for dissolution in the partnership deed, this will have to be negotiated. In carrying out the negotiations for whichever party one is acting, the two important matters to consider are practice premises and patients. It is quite impossible for doctors who have been in partnership to continue to practise in the same premises after dissolution. That is why, if there is only one main practice premises, dissolution is virtually impossible unless one of the partners is prepared to sacrifice a considerable portion of his goodwill. Naturally, if there is more than one main practice premises, a dissolution becomes comparatively simple; but if there is only one, then possibly the other partner might be given a certain period in which he must find alternative accommodation, being given facilities in the original main practice premises for this period. As single-handed practices are to be carried on in the same area as the partnership, there can be no restriction so far as area is concerned, and therefore any restriction must concern patients. The only real restriction which can be inserted in National Health Service practices is that each partner should not treat patients on the other partner's list for, say, a period of two years after the date of dissolution. As previously pointed out, there are difficulties in imposing such a restriction as, in so many partnerships of this nature, the patients on the list of

partners bear little relation to the patients the partners treat. Sometimes executive councils will help the partners to equalise their list or make them correspond to the patients they treat, but the difficulties are considerable. When private practices are dissolved the same difficulty does not really arise, as the patients treated by each partner can be traced from the books of the partnership, and lists prepared. These can be set out in a schedule, and a covenant by each party can be made not to treat the other partner's patients for a limited time.

#### Partnerships abroad

Again, owing to the difficulty of obtaining a National Health Service partnership, many practitioners have been encouraged to enter into partnerships abroad. One is sometimes asked to draw up these partnerships even though one is acting for the partner to be admitted, as solicitors abroad are not conversant with the usual partnership deed. However, if one does draft such a deed, it is essential that it should be forwarded to agents in the country concerned for completion. For instance, in drawing a partnership deed to be operative in Malaya, the writer found that restriction clauses were unenforceable in that particular country. Naturally, there should be an overall provision in such deeds that the articles of partnership must be construed in accordance with the law of the country concerned.

If, as so often happens, the junior partner proposing to enter into a partnership abroad has not seen his proposed partners and merely has been in communication with them, then there is only one safe method to adopt in drawing the articles of partnership. There should be a schedule to such articles setting out all the facts that one's client has received from his proposed partner, and there should be a provision in the articles of partnership that, on arrival, the client has, say, two months to investigate the practice with or without an accountant, and if he does not find the details in accordance with those set out in the schedule, he has the right to rescind the deed and receive back the deposit or any other moneys paid.

(Concluded)

J. M. F. L.

## GENERATIONS OPPOSED

ALTHOUGH the case of *Re H. R. Harmer, Ltd.* [1958] 3 All E.R. 689 (C.A.) is important for company lawyers its significance may be even greater for sociologists. The interest of the case to lawyers arises from its being the first English case decided under s. 210 of the Companies Act, 1948, although there have been two such cases in Scotland, viz., *Elder v. Elder & Watson, Ltd.* [1952] S.C. 49, and *Meyer v. Scottish Co-operative Wholesale Society* [1954] S.C. 381; [1957] S.C. 110; [1958] 3 W.L.R. 404 (H.L.); 102 Sol. J. 617.

#### Section 210 of the Companies Act, 1948

Section 210 of the 1948 Act was enacted to be a protection to minority members of a company in case of oppression by the majority. No corresponding section existed in the 1929 and earlier company legislation, although the court had power to wind up a company if it was of opinion that it was just and equitable to do so. The Cohen Report on company law amendment (Cmd. 6659, June, 1945) pointed out that often a winding up is no solution for minority members seeking redress from oppression, because the break-up value of the assets may bear no relation to their worth as part of a going

concern and, further, the only available purchaser may well be the majority of the company. In the light of these observations s. 210 was devised and entitles any member of a company who complains that its affairs are being conducted in a manner oppressive to some part of the members (including himself), to apply to the court by petition for an order under the section. If the court considers that the company's affairs are being conducted oppressively and that to wind up the company would unfairly prejudice the oppressed minority, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the court may make such order as it thinks fit. The object of the order must be to bring to an end the matters complained of. With this aim in view the court has the widest powers which include making alterations or additions to the company's memorandum or articles, ordering the purchase of shares of any shareholders of the company by other members or by the company at a price to be determined or approved by the court, and making any necessary consequential orders such as appropriate reduction of the company's capital. If the wording of the company's

memorandum or articles is so varied, the company is precluded, without leave of the court, from making any further alteration in or addition to those documents inconsistent with the provisions of the order.

### The facts of *Re H. R. Harmer, Ltd.*

The case of *Re H. R. Harmer, Ltd.*, concerned the founder of the well-known business of philatelic auctioneering and dealing in and valuing stamps, and two of his sons, all of whom were members and directors of the company. The nominal capital of the company was £50,000 divided into 39,000 preference shares of £1 each, 10,000 "A" ordinary shares of £1 each and 1,000 "B" Ordinary shares of £1 each. All the ordinary shares had been issued. Whereas the "A" ordinary shareholders received the residue of profits in each year available for dividend, the "B" ordinary shareholders were not entitled to participate in profits but enjoyed the whole of the voting power available. In the event of a winding-up the "A" and "B" shares would rank equally in respect of return of capital and participation in surplus assets. In October, 1957, when application to the court was made for an order under s. 210, the founder held 1,028 "A" shares and he and his wife (who voted as he wished) held 786 "B" shares; his son Cyril held 4,611 "A" shares and (with his, Cyril's, wife) 107 "B" shares; and his son Bernard held 4,361 "A" shares and (with his, Bernard's, wife) 107 "B" shares. The distribution of the preference shares was not relevant for the purposes of the case. Thus the founder, with his and his wife's votes, was able to control the company as their voting power was adequate to secure the passing of extraordinary and special as well as ordinary resolutions. The founder was styled governing director of the company, but no special powers or duties were assigned to that office, and he and both his sons were life directors with the father as chairman with a casting vote.

In their petition to the court the sons complained that, owing to the father's actions, the affairs of the company were being conducted in a manner oppressive to some part of the members including themselves. On 12th May, 1958, Roxburgh, J., made an order granting relief under s. 210 and it was from that order that the father appealed, without success, to the Court of Appeal.

### Subject-matter of sons' complaints

Many of the sons' complaints against their father's behaviour had to be formally set out in order to make their application to the court. The gist of these was that the father considered that he was entitled to disregard resolutions of the board of directors as long as he held the voting control. For the father it was conceded that at the time of the presentation of the petition to the court the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up.

In 1948 it appears that Mr. Harmer senior (then about seventy-nine having been born in 1869), went to Australia to investigate the possibilities of opening a branch there. Without the authority of the board of directors, and in spite of protests from the other directors, he then committed the company to setting up a branch business in Australia and this had not proved a profitable venture. In 1954 the governing director purported to dismiss summarily, apparently on a slight pretext, a long-standing employee who had been appointed a director on the formation of the company in 1947 to take over the business founded many years earlier. Although in fact the employee continued to be employed the

governing director prevented his re-election as a director. By means of his casting vote as chairman he procured the appointment of directors whom he expected to vote as he directed.

Other acts, justifying Roxburgh, J.'s remarks as to the effect of age on Mr. Harmer senior, included his writing a letter to the company secretary forbidding the calling of board meetings without his agreement; after ordering a certain cheque to be drawn in defiance of a board resolution, replying to the secretary's protest that he was the company and that she must do as she was told; without consulting the board engaging a detective to test his suspicions about certain senior members of the staff stealing the company's property, an action naturally resented by the staff who appreciated what was happening; after the company's surveyors had been instructed to conclude negotiations for a renewal of the lease (in respect of the company's London premises) at a specified figure upon the authority of a board resolution, his instructing the surveyor not to proceed with the negotiations with the result that through the delay so caused the company lost the opportunity of making an advantageous bargain for the renewal of the lease.

### Grounds of appeal

The grounds of Mr. Harmer senior's appeal included that it was not shown that the affairs of the company were being conducted in a manner oppressive to the sons as members but only as directors; that the sons were not entitled to complain of the father's conduct, because they had acquired their ordinary shares as a gift from him and because from the time of the company's formation it had been recognised that the father intended to retain control of it; that the acts complained of might have been lawfully done by calling a general meeting and passing the requisite resolutions; and that this was not a case of discrimination between different shareholders or classes of shareholders.

### Judgments

In unanimously dismissing the father's appeal, the Court of Appeal (Jenkins, Romer and Willmer, L.J.J.) adopted the definition given by Viscount Simonds in *Scottish Co-operative Wholesale Society, Ltd. v. Meyer* [1958] 3 W.L.R. 404 (H.L.); 102 Sol. J. 617, that the word "oppressive" in s. 210 of the Companies Act, 1948, meant "burdensome, harsh and wrongful." In a review of the wording of that section Jenkins, L.J., remarked, at p. 698:—

"the section gives no guidance as to the meaning of the word 'oppressive,' although it does . . . indicate that the victim or victims of the oppressive conduct must be a member or members of the company as such. *Prima facie*, therefore, the word 'oppressive' must be given its ordinary sense and the question must be whether in that sense the conduct complained of is oppressive to a member or members as such. Inasmuch as in the present case it is not in dispute that the facts would justify a winding-up order under the "just and equitable" rule and it is recognised that such an order would unfairly prejudice the complaining members, this would appear to be, in effect, the only question in issue."

Further general principles, to guide the court in reaching its conclusion whether in any particular case there had been oppression of a group of shareholders, were expounded by Romer, L.J. It was his lordship's view, approving that expressed by Roxburgh, J., that, although attention must

be paid to individual incidents of complaint, the court must really be concerned to consider the history of the matter as a whole and to see whether a course of conduct was established which constituted an oppression of certain shareholders.

Further, members of a company are entitled to have its affairs conducted in accordance with its constitution. Shareholders are also entitled to the benefit of the collective experience of the directors, every one of whom should be free to express his views at board meetings; regard should be paid to these views and to resolutions properly passed. Romer, L.J., went on, at p. 706:—

"If the board is browbeaten and either ignored or overruled by one of its number . . . the proprietary interests of the minority shareholders cannot fail to be affected and a case of oppression within s. 210 is . . . made out."

Romer, L.J., also disposed of the point, made on behalf of Mr. Harmer senior, that it was not open to the sons to base a petition under s. 210 on the ground that their father had been conducting the company's affairs in an oppressive way, because they had been given the bulk of their shares by the father. This submission ignored the fact of the creation of the company and it was not open to the father to disregard the legal entity which had been brought into being. In this connection Jenkins, L.J., remarked that shares given must confer the same rights as those transferred for full consideration.

The decision in *Re H. R. Harmer, Ltd.* establishes that s. 210 relief is not confined to cases of discrimination between classes of shareholders, that oppression within the meaning of that section is not limited to that aimed to satisfy a desire for pecuniary advantage rather than for power as such, and that for a member to assume power he does not possess and to exercise that power against the wishes of shareholders who have major beneficial interests but a minority of votes is *prima facie* oppression and shifts the burden of proof. This last point may well be of great use in the future to members of a company whose shares give them no voting rights. There is no reason why such members should not petition the court under s. 210, and it would be open to the court to order the giving of voting rights to the holders of the shares concerned.

#### Wider aspects

Although the legal points decided in the "truly lamentable litigation" (*per* Jenkins, L.J.) known as *Re H. R. Harmer, Ltd.*, are important, the case has a much wider interest. There must be many examples up and down the country, both in the past and at present, of family businesses, whether or not in corporate form, where the founder ages and yet is loth to give up what he has created, and the younger generation in dealing with the business problems of the day have also to contend with the obstinacies, prejudices, lapses of memory or deafness, perhaps, of the governing director, senior partner or whatever he may be termed. They may well have to take what consolation they can from Shelley's line that "old men are testy and will have their way."

The examples of difficult behaviour on the part of the founder, so coldly recorded in the formal law reports of the

*Harmer* case, are full of human interest and will surely recall similar examples to any reader who is concerned with a family business of more than one generation's standing. The family relationship of the senior executives, the founder's wife loyally agreeing without question to vote in the way her husband wishes, the increasing embarrassment of the younger generation as the "old man" becomes older and odder with the passage of time, the climax—too often a tragedy for the domestic side of family relations—must be a common pattern.

The outsider can sympathise both with the older and younger generations. One can well understand the founder's view that the business is his creation and should remain his, however irrational his whims (Mr. Harmer senior's statement: "I still believe that I am entitled to disregard resolutions of the board so long as I hold the requisite proportion of the control shares," exemplifies this); he may forget that he was responsible for his son(s), nephew(s) or cousin(s) entering the business at all. On the other hand, how difficult is the lot of the younger generation, maybe over fifty years of age, when faced with (to quote Roxburgh, J., in the *Harmer* case) "autocratic interference in the day-to-day affairs of [the] business, the havoc which can be wrought by age and infirmity. . . ." So many of the actions described in the *Harmer* case must be far from unique. The founder's securing of election to the board of directors of persons (whom Mr. Harmer, senior, called "certainties") he regarded as likely to act as his nominees, the threat of using his voting power to impose his will on the rest of the board, his countermanding on his own authority and without the knowledge of his co-directors decisions made by the board, must all sound familiar to similarly afflicted younger generation directors even if things never quite reach the stage (as in the *Harmer* case) of installing a tape recorder to take down everything said at board meetings at which the solicitors of the parties concerned are present.

One sympathises with the Harmer family who felt compelled to litigate in the end. Obviously the decision was difficult to make and taken reluctantly; the first complaints formally recorded in the report took place almost a decade before the action was brought. The behaviour described must occur not only in family businesses whose founders are still active but also where older generation descendants of the founder are reluctant to allow the next generation too much control or initiative. It is to be hoped that many benefits far outside the philatelic world will flow from the *Harmer* case. When "incidents" between the generations begin to occur in a family business let the participants beware before it is too late; if they are not already aware of the *Harmer* case let their solicitors present them with a copy of the report to read; if they are aware of it let them be reminded to read it again, consider and inwardly digest. It may be that such action taken in time will avert many potential tragedies; the older generation may realise that the time is coming when greater delegation of responsibility to the younger one is desirable in the interests of all concerned, not least the business itself.

N. D. V.

Mr. ERIC GEORGE HAROLD BERESFORD has been appointed a county court judge. He succeeds Judge Norris as the judge for the districts of the Dudley, Redditch, Walsall, West Bromwich and Wolverhampton County Courts (Circuit 25) and sits as an additional judge in the district of the Birmingham County Court (Circuit 21).

Mr. HAROLD FELIX CASSELL has been appointed deputy chairman of the Court of Quarter Sessions for the County of Hertford.

Mr. RALPH ARTHUR DONOVAN COPPER has been appointed an Assistant Official Receiver in the Bankruptcy (High Court) Department.

## A Conveyancer's Diary

1958

FROM the property lawyer's point of view the statutes of 1958 have surpassed in interest and importance the cases reported as having been decided in the course of the year. An article on "Some 1958 Statutes and the Conveyancer," at p. 945 (references in this article to a page simply are references to vol. 102 of this journal), outlined the main provisions of a number of measures of minor and middling importance, such as the Costs of Leases Act and the Agriculture Act. (As to the latter, its social and constitutional impact will doubtless be considerable, but the practice of conveyancing will hardly be affected by it.) Pride of place under this head goes to the Variation of Trusts Act, 1958, which was—or perhaps, more accurately, the historical antecedents of which were—the subject of an article in this Diary at p. 735. Since that article was published orders have been made in certain cases in exercise of the jurisdiction conferred by the Act, if rumour can be trusted: since this jurisdiction is normally exercisable in chambers, reports are not available. The Act has swept away some quite absurd anomalies, and if care is taken in the preparation of applications under it there is no doubt that it will do a great deal of good. But attention should not be diverted by this new measure from older jurisdictions, which still have a purpose to serve: e.g., in *Re Shipwrecked Fishermen & Mariners' Royal Benevolent Society* [1958] 3 W.L.R. 701; 102 Sol. J. 878, an order was made under our old friend, s. 57 of the Trustee Act, 1925, extending the powers of investment of trustees in a case where, the trust being a public and not a private one, the new Act would have had no application. (This decision was mentioned briefly in an article at p. 893 on "Charity Trustees' Powers of Investment"; it will deserve further consideration in the light of a full report.)

### Finance Act, 1958

The Finance Act, 1958, has at long last provided us with a properly graduated scale of stamp duty on conveyances on sale, etc. If this reform has not yet had the hoped-for effect of increasing the flow of ordinary conveyancing work into our offices and chambers, it is nevertheless most welcome as a substitute for the patchwork legislation of the past on this subject. But important as is s. 34, it is likely in the long run to be overshadowed by s. 28, which has had the effect of abolishing the exemption from estate duty which in the past has followed upon a purchase by a life-tenant of the interest in remainder in the trust premises. The passing of the old law will be mourned not only by the client, to whom it brought financial advantage, but also by his lawyer, who had little difficulty in either remembering or applying it. The new law, which occupies thirteen subsections, is not easily committed to memory. As a small *quid pro quo* for the taxpayer, however, what is often referred to as the *commorientes* rule, which could bear particularly hard on the estates of spouses who had made mutual wills (see the case reported in *The Times*, 4th October, 1957, under the title *Re Beare*), has been modified by s. 29 so as to avoid a double charge to duty in these cases; and quick succession relief has been extended by s. 30.

### Matrimonial, Land Powers and Recreational Charities Acts

Next comes the Matrimonial Causes (Property and Maintenance) Act, 1958, which among other things provides that an order may be made for maintenance out of the estate of a deceased person for a former spouse who had not remarried. This Act was brought into operation on 1st January by S.I. 1958 No. 2080. (The jurisdiction is not simply an extension to the new case of that created by the Inheritance (Family Provision) Act, 1938. It is a completely new jurisdiction and is not, therefore, covered by the code of procedure contained in R.S.C., Ord. 54r, which governs applications under the 1938 Act: see the article in this Diary at p. 769.) The Land Powers (Defence) Act, 1958, is another statute of some importance to the conveyancer, for, as its title implies, it authorises (in certain instances by putting on a permanent basis certain similar emergency powers) various interferences with the occupation of land. This Act was the subject of an article in this Diary at p. 610. A statute to which, I think, I have not referred is a minor one dealing with charities, the Recreational Charities Act, 1958. This sets at rest certain doubts which arose as a result of the decision in *Inland Revenue Commissioners v. Baddely* [1955] A.C. 572; 99 Sol. J. 166, as to whether trusts for the provision of recreational facilities, such as trusts for the upkeep of a recreation room in a village (*Re Morgan* [1955] 1 W.L.R. 738; 99 Sol. J. 453), were charitable or not. This closes the list of the 1958 statutes of direct concern to the conveyancer, but the year also saw a Statute Law Revision Act and in the Schedule of the obsolete or spent Acts repealed thereby there are two worthy of mention. One is the Declaration of Title Act, 1862, a measure "to enable persons having interests in land to obtain in certain cases a judicial declaration of their title to the same, so as to enable them to make an indefeasible title to persons claiming under them as purchaser for a valuable consideration." I had never heard of this statute, and I suppose that in practice its provisions were superseded by other procedures—the vendor and purchaser summons, or applications for a declaratory judgment under R.S.C., Ord. 25, r. 5. The other is a statute entitled "*Ne Rector prosternat Arbores in Cemeteris*," evidently an ancient (so ancient that no date is ascribed to it) example of tree preservation by legislation.

### Case law

The most useful decision of the year, in my view, was one on a subject which has become something of a pet of mine in the last few years—*Re Moxon's Will Trusts* [1958] 1 W.L.R. 165; 102 Sol. J. 124, on the (so called) power of advancement. In this case it was held that a power to apply capital money for the benefit of a person means what it says, and authorises trustees to pay capital money to a beneficiary if they think it is for his benefit. In the subsequent case of *Re Wills' Will Trusts* [1958] 3 W.L.R. 101; 102 Sol. J. 490, trustees were held to be entitled under this power to make settlements of the trust property upon a beneficiary. These cases formed the subject of articles in this Diary at pp. 168 and 520 respectively. Apart from these two there were few cases of any note in the reports. *Re Birmingham* [1958] 3 W.L.R. 10; 102 Sol. J. 454, brought out from a long seclusion that extraordinary

right, the vendor's lien for unpaid purchase money, and showed how inconvenient some of the incidents of this right can be. *Coutts & Co. v. Duntroon Investment Corporation, Ltd.* [1958] 1 W.L.R. 116; 102 Sol. J. 69, revealed, and filled, a gap in the existing case law on controlled mortgages. And *Fry v. I.R.C.* [1958] 2 W.L.R. 673; 102 Sol. J. 271, caused some hearts to flutter when it was first reported, rather shortly, in *The Times* newspaper, in the mistaken belief that it had done for the estate duty concession on purchases of remainders by life-tenants what the Finance Act was to do shortly after. It did not (see the article in this Diary at p. 300) even before it was reversed on appeal ([1958] 3 W.L.R. 38; 102 Sol. J. 617).

#### Law relating to restrictive covenants

It may be presumptuous on my part to include in this short account of the events of 1958 two articles of my own, but I do so nevertheless, not because of the importance of the articles (they were only stalking horses), but because of the importance of the subject. At pp. 392 and 412 I reviewed briefly the law of enforceability as between successors of restrictive covenants affecting land, in the light of recent cases, and then put forward some proposals for the reform of the law by the removal of certain unsatisfactory existing features,

### Landlord and Tenant Notebook

## "FAIR WEAR AND TEAR"

LITERARY works which were first published in 1859 and have since become classics include Fitzgerald's translation of the *Rubáiyát* of Omar Khayyám. A worst seller at the time, it later acquired much popularity; and many readers of this journal may have had occasion to quote from the quatrain which concludes: "... and heard great argument. About it and about: ... but ever more Came out by the same door as in I went." I was myself reminded of this utterance when reading the speeches of Viscount Simonds and Lord Denning in *Regis Property Co., Ltd. v. Dudley* [1958] 3 W.L.R. 647; 102 Sol. J. 844 (H.L.), which included, respectively: "My lords, I have quoted this passage [a passage from Talbot, J.'s judgment in *Haskell v. Marlow*] ... because it states better than I could state it what I believe was always regarded as the law on this matter until *Taylor v. Webb* was decided and should now be reinstated as the law by your lordships' decision" and "I think the Court of Appeal were wrong in overruling *Haskell v. Marlow*."

The question of reinstatement arose when the landlords in *Regis Property Co., Ltd.* (the main point in which was discussed in the "Notebook" for 27th December last; 102 Sol. J. 949), contended that, in assessing the extent of the tenant's liability for repairs for the purpose of determining the rent limit under the Rent Act, 1957, ss. 1, 2 and Sched. I, para. 1, the county court judge had left out of consideration the fact that the tenant's repairing covenant contained a "fair wear and tear excepted" qualification. This, they said, virtually reduced the tenant's responsibility to nothing, as had been shown by *Taylor v. Webb* [1937] 2 K.B. 283 (C.A.). Whether the authority in question did go so far as was suggested was considered open to doubt; but, as Viscount Simonds said, it had, though the decision may have been correct in the peculiar circumstances of the case, been regarded as making a substantial change in the law. And this view was not correct.

notably the difference, far too pronounced in my view, in the treatment of devolution of burden and benefit. These may not have been very good proposals, but the matter calls for some reform. Since these articles were written I have had personal experience of another case similar to *Re Pinewood Estate* [1958] Ch. 280, in which covenants contained in a mutual deed of covenant were held to be unenforceable by and against successors despite, as it seemed to me, an abundantly clear intention on the part of the original parties to the deed in the contrary direction. But the law reformers have so far shown no interest in this subject.

#### Rights of Light Bill

Lastly, I may mention the report of the Harman Committee on certain problems of the present day connected with the law of light, about which I wrote at p. 554. A Bill to amend the law in accordance with the recommendations of this report was read the first time in the House of Lords on 6th December, 1958. This Act (for one may confidently expect the speedy passage of the Bill into law) will call for some swift action from practitioners whose clients' property is affected, and the progress of the measure should be carefully watched.

"A B C"

#### Decay and use

The facts of *Haskell v. Marlow* [1928] 2 K.B. 45 might be considered peculiar, the claim being by the trustees of the testator's will against the executors of his widow, to whom he had left his house for life, she "keeping the same in good repair and condition (reasonable wear and tear excepted)." He may not have contemplated her surviving him by forty-two years, and when she died it was found that she had done nothing actively to injure the house and premises, but had also done but little to counteract the natural process of decay; greenhouses had largely collapsed, a bridge had disappeared, summer houses were a wreck, the whole premises had been allowed to get into a very shocking state of disrepair. The official referee awarded the plaintiffs £550 and the defendants appealed to a divisional court: Salter and Talbot, JJ.

Both agreed that the appeal should be dismissed; but while in *Regis Property Co., Ltd. v. Dudley* Viscount Simonds expressed preference for the judgment of Talbot, J. (which was the one more forcibly criticised by the Court of Appeal in *Taylor v. Webb*), that of Salter, J., is worth considering if only because, unlike his colleague, he examined a large number of older decisions and pointed out that in many of them, while the covenant before the court had included the exception, very little stress had been laid upon it. But in *Terrell v. Murray* (1901), 17 T.L.R. 570, Bruce, J., had suggested that it covered "dilapidations caused by the friction of the air, dilapidations caused by exposure, and dilapidations caused by ordinary use"; *Miller v. Burt* (1918), 63 Sol. J. 117, gave us the formula: "The tenant is responsible for repairs necessary to maintain the premises in the same state as when he took them. If, however, wind and weather have a greater effect on the premises, having regard to their character, than if the premises had been sound, the tenant is not bound so to repair as to meet the

extra effect of the dilapidations so caused." Salter, J., referred also to *Manchester Bonded Warehouse Co. v. Carr* (1880), 5 C.P.D. 507, in which Coleridge, L.C.J., said: "It only remains to consider whether reasonable wear and tear can include destruction by reasonable use. These words, no doubt, include destruction to some extent, e.g., destruction of surface by ordinary friction, but we do not think that they include total destruction by a catastrophe which was never contemplated by either party" (in that case a warehouse had been overloaded by sub-lessees).

The last-mentioned authority was briefly referred to by Talbot, J., who had, however, already expressed his conclusion, without reference to older decisions, in the following words: "... his obligation to keep in good repair is subject to that exception. If any want of repair is alleged and proved in fact, it lies on the tenant to show that it comes within the exception. Reasonable wear and tear means the reasonable use of the house by the tenant and the ordinary operation of natural forces. The exception of want of repair due to wear and tear must be construed as limited to what is directly due to wear and tear, reasonable conduct on the part of the tenant being assumed. It does not mean that if there is a defect originally proceeding from reasonable wear and tear the tenant is released from his obligation to keep in good repair and condition everything which it may be possible to trace ultimately to that defect. He is bound to do such repairs as may be required to prevent the consequences originally flowing from wear and tear from producing others which wear and tear would not directly produce... For example, if a tile falls off the roof, the tenant is not liable for the immediate consequences; but, if he does nothing and in the result more and more water gets in, the roof and walls decay and ultimately the top floor, or the whole house, becomes uninhabitable, he cannot say that it is due to wear and tear."

#### "Directly"

It may be of some importance that in *Taylor v. Webb*, now doubted or disapproved, the landlord was the covenantor entitled to the benefit of a "fair wear and tear excepted" qualification; reasonable use could not, therefore, come into the picture. It was shown that the disrepair in question was "due solely to the operation of natural causes—namely, wind, rain and decay." But as time went on several rooms had to be disused.

Du Parcq, J., applied *Haskell v. Marlow* and awarded the tenant £130; but the Court of Appeal allowed the landlord's appeal. It was considered that Talbot, J., had erred in distinguishing between direct and indirect consequences. If the landlord was under no obligation to effect a repair, he could not be responsible for damage flowing from an obligation which was not his, according to Slessor, L.J.; at what stage in the process of natural decay did the duty to effect repairs and prevent incursion of the elements arise, where was the line to be drawn? was Scott, L.J.'s reasoning; the exception meant, Farwell, L.J. considered, that the lessor was under no liability for disrepair due solely to such ordinary

natural causes as may fairly be said to have been in the contemplation of the parties, for example, wind and weather, assuming no abnormal use of the property.

#### Conduct

Scott, L.J., whose judgment was a comprehensive and analytical one, pointed out that whether the adjective "reasonable" or the adjective "fair" was used to qualify "wear and tear," the expression was an idiomatic one, implicitly referring to both cause and effect, and expressed the view that, as elements could not be fair (except in the meteorological sense) or reasonable, the effect of the exception was (when the tenant was the covenantor) to prevent the tenant from having *carte blanche* as to user: if the disrepair was caused by him or his invitees, he could rely on the exception only if the user had been fair or reasonable.

#### The reinstatement

But now, in *Regis Property Co., Ltd. v. Dudley*, Viscount Simonds has condemned the view that the exception reduces the obligation under the repairing covenant to a small or negligible amount, holding that in *Taylor v. Webb* the Court of Appeal either did not overrule or ought not to have overruled *Haskell v. Marlow*, and eulogising Talbot, J.'s exposition (set out above) in the latter. Lord Morton was content to point out that in the case before the House, as the repairing obligations related solely to the interior of a flat, it would not make much difference which view were applied. Lord Tucker briefly stated his preference for *Haskell v. Marlow* in so far as questions of principle were involved. Lord Keith did not deal with the point. Lord Denning, after agreeing that the Court of Appeal had been wrong in overruling *Haskell v. Marlow*, said that the exception exempted a tenant from liability for repairs that are decorative and from remedying parts that wear out or come adrift in the course of reasonable use, but not from anything else, and cited the example of the tile or slate falling off: the tenant is not responsible for its falling off, but he ought to put in another one to prevent further damage.

#### Comment

As far as that slate or tile is concerned, it would appear at first sight that the covenantor tenant might be inclined to say "thank you for nothing" when offered the benefit of a fair wear and tear exception. But if the event occurred towards the end of the term and fair weather prevailed the exception would give a tenant covenantor a considerable advantage.

But the "great argument about it and about" appears to have been due, substantially, to two different approaches being made. The "fair" or "reasonable" might be intended to absolve the covenantor if the dilapidations, however caused, were moderate; or if, however extensive, they were not due to what could not have been contemplated or expected. The result suggests a compromise: he is liable for serious consequences though user may have been normal.

R. B.

Mr. LESLIE B. GALLIFORD, clerk to Northam Urban Council since 1955, has been appointed Town Clerk of Bideford in succession to Mr. F. C. Backway, who is retiring.

Major ERNEST LESLIE PROUD, T.D., has been appointed Registrar of the Chancery Court of the County Palatine of Durham in succession to Colonel Hugh Leslie Swinburne, T.D., who has resigned.

Mr. GWYN TREHARNE has been appointed Registrar of the Swansea, Ammanford, Llanelly and Neath and Port Talbot County Courts and District Registrar in the District Registry of the High Court of Justice in Swansea in succession to Mr. Bertram P. Charles, who has retired.

Mr. JACK WIDDUP has been appointed deputy clerk to Wincanton Rural District Council.

## HERE AND THERE

### PORTRAIT GALLERY

THE lawyers returning to the Law Courts at the start of the Hilary Term will find that another big step has been taken towards transforming them into a portrait gallery of the law. It all started years ago in a small way on the library staircase. Since then, thanks to the librarian's knowledgeable enthusiasm for painting, the stream of pictures has flowed downstairs into the rest of the building. The corridors to Carey Street and the Divorce Court were recently filled. So was the staircase below the post office. Now has come the turn of the Central Hall and several enormous full-length portraits have made their appearance there. The architect modelled it on the Upper Church at Assisi and, though average legal portraiture hardly comes up to the level of the Giotto's in the Italian original, those cold, bare, grey expanses of wall needed covering and this is certainly the most appropriate way to do it. Full-length portraits grouped together create a decidedly awe-inspiring and even menacing atmosphere. These spectres from the past, like the gallery of ancestors in "Ruddigore," will, no doubt, exercise a wholesome influence in keeping their successors up to the mark.

### LITIGANT IN PERSON

IF the rest of the abundant wall-space in the Law Courts is to be used as a portrait gallery, some part of it at least should be devoted to notable litigants in person: Mrs. Weldon, Bottomley, Pemberton Billing, and others. Last year three litigants in person gave remarkable performances. One lady lost. Another only gained one of her points. But the third amateur gladiator in the legal arena, Lieut.-Col. Alfred Wintle, takes his place among the most accomplished artists in advocacy. The litigant in person has a lot of very special difficulties to overcome. The judges, it is true, are usually ready to be kind to him, but it is the sort of kindness one shows to a cripple, or a lame dog or an idiot child; they find it hard to believe that he has anything valuable to contribute to the discussion. A litigant in person is well advised to keep off legal argument; even when he has mugged up a little legal jargon and some case law, he has no background and consequently no idea of how things hang together in the law's scheme of things or what are their right proportions. Further, the litigant in person is always hampered by a burning belief in the righteousness of his own cause and the unrighteousness of his enemies. This may well have been a most useful state of mind in the procedure of trial by battle, but it does not make for that lucidity and order in argument which is likely to convince the unconverted. Then again the litigant in person usually has a taste for the telling phrase, the purple patch, the dramatic denunciation, the invocation of the spirit of British Justice, all the things that even the most accomplished orator would not care to attempt in the sober, subdued atmosphere of an English

court. What a litigant in person really needs is, first, a case in which the facts, soberly presented, speak for themselves and, second, the self-restraint to let them do it.

### HOW TO DO IT

THOSE were really the reasons why Colonel Wintle won in the end and the self-restraint which (for the most part) he displayed in the House of Lords was a triumph for his self-discipline and his intelligence in assessing his tribunal. He had, by the way, some days previously, like a good officer, reconnoitred the terrain, listening to an earlier appeal to get the right atmosphere. By nature and inclination he is obviously a flamboyant character straight out of the seventeenth century. The now famous "debagging" of the solicitor was pure Cyrano de Bergerac. It is just how he would have treated the actor Montfleury. Incidentally, our own General Monck, Duke of Albemarle, started soldiering as a young man because, having ridden into Exeter to thrash an attorney, the under sheriff of the county, who, contrary to an express undertaking, had arrested his father for a debt, he had to disappear quickly and so joined the expeditionary force then sailing for Cadiz. The story of Wintle's war-time attempt to fly over to collapsing France and bring the French air force to England and his subsequent court-martial for drawing a gun on the air-commodore who obstructed him, was pure Cyrano in modern dress. So too were his subsequent exploits in disguise in war-time France amid Nazi agents and Vichy police, his year in a Toulon gaol and his eventual escape through Spain and Portugal. Apart from his intelligent self-restraint in the House of Lords, he was every inch the soldier, springing to attention and replying "Sir!" whenever one of the Law Lords addressed him. With the leader on the other side he maintained the traditional courtesies of war between opposing commanders and shared snuff with him. Reading the shorthand transcript of the trial and coming to a passage where Mr. Justice Barnard had said he was "difficult," he looked up and said, "I hope I do not be difficult here, my Lord." "No, Colonel Wintle," replied Lord Simonds warily, "not yet." At one point he could not resist describing the cross-examination of the defendant at the trial as "half-hearted, luke-warm and inept," but then his standards of cross-examination, as he plainly said, were those of an intelligence officer cross-examining an enemy prisoner. His narrative of the complex facts of the case was a masterpiece of coherence, enlivened by an occasional flash of his out-of-court personality. The legal profession took the short, wiry, monocled colonel to its heart. His health was drunk by the younger members in the Halls of two of the Inns of Court. One of the circuits sent him a present of champagne. Yes, his portrait ought to hang somewhere in the Law Courts, preferably in the Probate Division.

RICHARD ROE.

## OBITUARY

### LIEUT.-COL. L. N. BAVIN

Lieut.-Col. Lancelot Neville Bavin, solicitor, of Truro, died on 25th December, 1958. He was admitted in 1946.

### MR. J. L. M. BENEST

Mr. John Langston Millais Benest, retired solicitor, of Reigate, died on 30th December, 1958, at Bournemouth. He was admitted in 1902.

### MR. E. OLIVER

Mr. Edward Oliver, solicitor, of Ilford, died on 20th December, 1958. He was admitted in 1926.

### MR. W. TOPHAM

Mr. Walter Topham, solicitor, of Harrogate, died on 21st December, 1958, aged 89. He was admitted in 1899, and served on the Harrogate Town Council from 1907 to 1920.

## NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

### Court of Appeal

#### LANDLORD AND TENANT ACT, 1954: DEMOLITION OR CONSTRUCTION OF SUBSTANTIAL PART: AMALGAMATION OF ADJOINING SHOPS

**Bewlay (Tobacconists), Ltd. v. British Bata Shoe Co., Ltd.**

Lord Evershed, M.R., Sellers, L.J., and Roxburgh, J.

21st November, 1958

Appeal from Ilford County Court.

The landlords of a retail shop, who owned and occupied the adjoining shop, gave notice to the tenants determining the tenancy. On the tenants applying to the county court under the Landlord and Tenant Act, 1954, for the grant of a new lease, the landlords opposed on the ground that on the termination of the tenancy they intended to demolish and reconstruct the premises or a substantial part thereof, and could not reasonably do so without obtaining possession. The scheme was to amalgamate the two self-contained shops into one shop. It was proved to the satisfaction of the judge that the landlords intended, *inter alia*, to reconstruct an entirely new shop front, involving the abolition of the existing means of access to the street, and to remove three-quarters of the dividing wall between the two shops, which necessitated alterations to some of the pillars supporting the ceiling. The judge considered that the proposed work involved both the demolition and reconstruction of a substantial part of the premises, and, accordingly, he refused the tenants' application. The tenants appealed.

LORD EVERSLED said that as the issue was a question of degree and fact the tenants could not succeed on an appeal unless they showed that the judge had misdirected himself. He did not accept the tenants' submission that the removal of the wall was not "demolition" or the work in replacement not "reconstruction" in the relevant sense. Nor could the change of shop front be disregarded. The judge was entitled to look at the totality of the work and although he, his lordship, did not express any view as to what might be the decision in a case where neither the alleged demolition nor construction were, taken in isolation, substantial, in the present case there was evidence to support the judge's findings of fact; he had applied the correct test, and the appeal should be dismissed.

SELLERS, L.J., and ROXBURGH, J., agreed.

APPEARANCES: J. P. Widgery, Q.C., and Alan Fletcher (Bartlett & Gluckstein); Adrian Head (Hatten, Asplin, Jewers and Glenny, Grays, Essex).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 45]

#### COMMITTAL ORDER: FAILURE TO ATTEND BEFORE EXAMINER: DUTIES AND STATUS OF EXAMINER

**Hunt v. Allied Bakeries, Ltd. (No. 2)**

Jenkins and Romer, L.J.J., and Roxburgh, J.

27th November, 1958

Appeal from Wynn Parry, J.

Rules of the Supreme Court, Ord. 42, r. 32, provides: "When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court or a judge for an order that the debtor liable under such judgment or order . . . be orally examined . . . as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a judge or officer of the court as the court or judge shall appoint; and the court or judge may make an order for the attendance and examination of the debtor . . ." The plaintiff in the action, by an order dated 3rd December, 1957, which was headed with the names of the parties as plaintiff and defendants respectively, was ordered to attend before an examiner "at such time and place as the said examiner may appoint" to be orally examined as to his means of satisfying the directions contained in

various orders for the payment of costs. Several appointments were made before the examiner which the plaintiff failed to attend, and after his failure to attend an appointment fixed for 17th July, 1958, and indorsed on the order, the defendants moved for and obtained an order for the committal of the plaintiff to prison for contempt of court for failing to attend the appointment. The plaintiff appealed on the grounds that the order of 3rd December, 1957, and the indorsement thereon was defective in various respects.

JENKINS, L.J., said that the fact that the indorsement fixing the appointment of 17th July, 1958, was not signed by the examiner himself but was merely authenticated by the Central Office seal of the Supreme Court of Judicature did not invalidate it. Further, the order was not invalid because it retained the title of the action as its heading instead of using the heading to be found in Form 38 in Appendix K to the Rules of the Supreme Court. A point which had occasioned him (his lordship) more difficulty was the fact that in the present case the examination was to be held before one of the examiners of the court. The plaintiff submitted that for the purposes of R.S.C., Ord. 42, r. 32, an examiner of the court was not an officer of the court, and that, accordingly, the order of 3rd December, 1957, was an order not warranted by the rules, and, therefore, was invalid on its face. This argument was based on a note at p. 1034 of the *Annual Practice* (1959 edition). But he (his lordship) was not satisfied that for the purposes of this rule examiners of the court were not officers of the court. Moreover, as appeared from the note, the practice adverted to was introduced as long ago as 1929, and he was not prepared on any submission which had been made to the court in the course of the present case to hold that this long-standing practice was *ultra vires*. The plaintiff also raised the point that the order was *ultra vires* because the appointment to attend for examination was to be made by the examiner and not by the court or judge, as prescribed by R.S.C., Ord. 42, r. 32. But in his (his lordship's) opinion this was a purely ministerial act and there was nothing obnoxious in delegating the making of an appointment to the examiner. The appeal would be dismissed.

ROMER, L.J., and ROXBURGH, J., agreed. Appeal dismissed.

APPEARANCES: The plaintiff appeared in person; W. E. Denny (A. Kramer & Co.).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 50]

#### ADOPTION: JURISDICTION TO MAKE ADOPTION ORDER IN FAVOUR OF MOTHER OF ILLEGITIMATE CHILD

**In re D, an Infant**

Lord Denning, Hodson and Ormerod, L.J.J. 28th November, 1958

Appeal from Lambeth County Court.

The mother of an illegitimate infant applied to the county court for an adoption order to be made in her favour under the Adoption Act, 1950. Her application was supported by the local authority as guardian *ad litem*, which reported that the mother was "anxious to remove the stigma of illegitimacy from the child," that the care bestowed on the infant was satisfactory, and that an adoption order would appear to be in the infant's best interests. The county court judge refused to make the order asked for, on the ground that the Act of 1950 was not designed nor intended to be used for the purpose of removing the stigma of illegitimacy, and that if an adoption order were granted in this case, it would no doubt become common form, and illegitimacy would automatically be abolished in this country. The mother appealed, her appeal being supported by the local authority.

LORD DENNING said that he could not agree with the reasoning of the county court judge. Sections 1 (3), 2 (1) and 12 (2) of the Act of 1950 seemed clearly to contemplate an adoption order being made in the circumstances now before the court. In property matters there were several potential advantages to an illegitimate child by making an adoption order. The child still remained illegitimate, but, being adopted, it became in law for all purposes a child of its mother and suffered none of the disabilities attaching to illegitimacy. Further, the child, when adopted, was

registered in the Adopted Children's Register, and that entry was received in evidence as if it were an entry in the Register of Births. There were thus clear advantages to the child if an adoption order was made, and though there must always be an inquiry and all the circumstances must be taken into account, it was no bar that the child was illegitimate. The appeal should be allowed and the adoption order made.

HODSON, L.J., concurring, said that the Act contemplated by its very terms that an unmarried mother might well be the applicant for an adoption order, though the exercise of the court's discretion was required to ascertain whether the mother or applicant was able to attend to the welfare of the child, that being the paramount object of the Act. In the present case the order should be made.

ORMEROD, L.J., agreed. Appeal allowed. Adoption order made.

APPEARANCES: *Richard Vick (William Sturges & Co.)*; *H. E. Francis (J. G. Barr, London County Council)*.

[Reported by Miss M. M. HILL, Barrister-at-Law]

[2 W.L.R. 26]

# **HIRE-PURCHASE AGREEMENT: WHETHER INITIAL PAYMENT ON MOTOR CAR "IN CONSIDERATION OF OPTION TO PURCHASE" RECOVERABLE WHERE CONTRACT TERMINATED BY OWNERS BEFORE OPTION EXERCISED**

**Kelly v. Lombard Banking Co., Ltd.**

Lord Denning, Hodson and Ormerod, L.J.J. 28th November, 1958

Appeal from Westminster county court.

By a clause in a hire-purchase agreement for a motor-car, the hirer agreed with a finance company "to pay on the signing of the agreement the initial payment of £186 2s. . . in consideration of the option to purchase contained in cl. 3 (b) hereof." The clause continued: "Credit for such payment shall be given to the hirer only in the event of such option to purchase being exercised by him." By cl. 3 (b) the owners agreed that if the hirer performed all the terms of the agreement on his part "he shall have the option to purchase the vehicle for the sum of 20s." The hirer paid the initial sum of £186 2s. and monthly rentals thereafter until he had paid a total of £419 6s. 2d. on the full hire-purchase price of £534 1s. 9d. At that point, execution was levied on him at the instance of a judgment creditor; and the finance company thereupon exercised their right under another clause in the agreement to terminate the agreement, and repossessed themselves of the car, refusing an offer by the hirer to pay the whole balance outstanding within a month. The hirer thereupon brought an action for the recovery of the initial payment of £186 2s., contending that as he had never obtained the option for which, under the terms of the agreement, he had paid that sum, it was recoverable as a payment, consideration for which had wholly failed. The county court judge dismissed the claim and the hirer appealed.

LORD DENNING said that the argument on behalf of the hirer was novel, namely that on the wording of the clause, the option did not come into being until the end of the hiring, when all the payments had been made; that it never came into being because the finance company terminated the hiring; and that, therefore, there had been no consideration for the payment and that it ought to be returned. His lordship could not agree with that interpretation of the contract. The option to purchase was an existing right, which existed as from the date of the agreement. It was true that it was subject to conditions, namely, to the hirer fulfilling his obligations in order to be entitled under it. But he had got what he paid for. Though it was hard on the hirer that he should have parted with his money and that the finance company should take both the car and the money, this agreement was not distinguishable from the many other hire-purchase agreements with which the court was familiar. The appeal must fail.

HODSON, L.J., concurring, said that there was no failure of consideration. The £186 2s. was paid in consideration of the option to purchase in cl. 3 (b). It was bought for £186 2s., notwithstanding that it could not be exercised until certain conditions had been fulfilled. Appeal dismissed.

APPEARANCES: *John Davies (Stanley & Co.)*; *Stephen Terrell (Victor Mishcon & Co.)*.

[Reported by Miss M. M. HILL, Barrister-at-Law]

[1 W.L.R. 41]

## **Chancery Division**

### **APPLICATION TO HIGH COURT FOR CHARGING ORDER ON FUND IN RESPECT OF JUDGMENT IN COUNTY COURT**

**London County Council v. Monks**

Danckwerts, J. 26th November, 1958

Adjourned summons.

The owner and occupier of a dwelling-house, in respect of which the London County Council had made a compulsory purchase order, and had served on her notice to treat, refused to give possession or to make title. She was awarded £2,000 compensation which was lodged in the High Court to her credit and the property was vested by deed poll in the London County Council. The owner was taken to a hostel of the London County Council and maintained there until she left it. As required by the National Assistance Act, 1948, the London County Council took proceedings in the county court to recover the cost of her maintenance, and recovered judgment for £292 14s. 9d. and £10 2s. costs. By s. 12 of the Judgments Act, 1838, it was made possible to take proceedings under *fieri facias*. Under s. 151 of the County Courts Act, 1888, re-enacted by s. 136 of the County Courts Act, 1934, a creditor could go to the High Court to enforce a judgment of the county court in the same way as to enforce a judgment of the High Court; and the Judgments Act, 1838, in s. 12 of which "money or banknotes" meant cash and did not mean, for example, a bank account, applied. By s. 34 (3) of the Administration of Justice Act, 1956, s. 136 of the County Courts Act, 1934, was repealed, and by s. 35 (1) the High Court and the county court were empowered to make a charging order on land of the debtor to secure payment of moneys due under an order. The London County Council took out a summons asking that the sum of £2,046 5s. 2d., being the compensation money with accrued interest, stand charged with payment to the London County Council of the £302 16s. 9d.

DANCKWERTS, J., said that the practice before the Administration of Justice Act, 1956, was that the proceedings in the county court were removed to the High Court of Justice by writ or order of certiorari and the reason for that was that, under s. 151 of the County Courts Act, 1888 (subsequently re-enacted by s. 136 of the County Courts Act, 1934), there was power in that way to make the judgment of the county court equivalent to a judgment of the High Court. But s. 136 of the County Courts Act, 1934, had been repealed by s. 34 of the Administration of Justice Act, 1956, and accordingly, in his lordship's opinion, there was no method of removing the county court proceedings to the High Court so as to be equivalent to a High Court judgment, and, that being so, there was no method by which the funds in the hands of the Paymaster-General could be reached. It was an unfortunate result because, of course, the judgment ought to be satisfied if the debtor had a fund, but he was forced to the conclusion that the court did not in practice make an order on the Paymaster-General in the case of a judgment of an inferior court, and no authority had been produced which would justify him (his lordship) making an order for payment out of funds in court in the present case. Summons dismissed.

APPEARANCES: *S. L. Newcombe (J. G. Barr, Solicitor, London County Council)*.

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

[2 W.L.R. 1]

### **ADMINISTRATION OF ESTATES: ORDER OF APPLICATION OF ASSETS: WILL: INTESTACY AS TO SHARE OF RESIDUE**

**In re Berrey's Will Trusts; Greening v. Waters and Others**

Danckwerts, J. 4th December, 1958

Adjourned summons.

A testatrix made her own will on a printed form which contained the usual directions found on printed forms referring to the revocation of previous wills and to executors, after which there was a direction that all her debts and funeral expenses should be paid as soon as conveniently might be after her decease. She then gave two legacies of £500 and provided: "After all my debts, and funeral, and expenses are paid, I give and bequeath all the residue of my estate in equal shares to" four named persons, one of whom predeceased her and whose share lapsed

accordingly. A summons was taken out to have determined the incidence of debts, funeral, testamentary and administration expenses and legacies.

DANCKWERTS, J., said that the words used by the testatrix "after all my debts, and funeral, and expenses are paid," showed an intention to vary the order of application of assets laid down in Pt. II of Sched. I to the Administration of Estates Act, 1925, and the payment of her debts, funeral and testamentary expenses and expenses of the administration of her estate were accordingly thrown on residue as a whole before there was any division into shares. The question of the incidence of the legacies appeared to him to be one of considerable difficulty, and not less so because of some rather varying decisions of himself and other judges. In *In re Beaumont's Will Trusts* [1950] Ch. 462, his lordship came to the conclusion, at any rate in the circumstances of that case, that the old law in regard to legacies which was current before 1926 applied, and that there was no case for the application of a different rule by virtue of s. 34 (3) of the Administration of Estates Act, 1925. In *In re Martin* [1955] Ch. 698, he had had to consider those provisions again, and he would refer to certain remarks of his in which he had given some explanation of his decision in *In re Beaumont's Will Trusts*. A rather similar question came before Harman, J., in *In re Midgley* [1955] Ch. 576, and it appeared from his judgment that he was not entirely in agreement with the views expressed in *In re Beaumont*. One other decision had to be referred to: *In re Worthington* [1933] 1 Ch. 771, a decision of the Court of Appeal which was binding on him if it was properly to be applied in the present case. There was no express trust for sale in the present case, and therefore the same considerations which were referred to in *In re Beaumont's Will Trusts* and in the explanation of that case in *In re Martin* were not applicable here. Therefore, following the decision in *In re Worthington*, he must infer that with regard to the undisposed-of one-fourth share (in the same way as regards the undisposed-of one-half share in *In re Worthington*), the trusts which created a trust for sale with a disposition of that resulting fund according to s. 33 of the Administration of Estates Act, 1925, had to be applied in the present case. It seemed to him that he got an express reference to the creation of a fund for the payment of legacies under the terms of the first paragraph of Pt. II of Sched. I to the Act, and he must apply *In re Worthington* and come to the conclusion that the legacies were payable out of the undisposed-of share in the present case.

APPEARANCES: P. S. A. Rosedale (Chalton Hubbard & Co., for Marsh & Ferriman, Worthing); G. A. Grove (Official Solicitor).

[Reported by Miss M. M. HILL, Barrister-at-Law]

[1 W.L.R. 30]

## Queen's Bench Division

### INCOME TAX: PENALTIES: "TREBLE THE TAX WHICH HE OUGHT TO BE CHARGED"

**Inland Revenue Commissioners v. Hinchy**

Diplock, J. 2nd December, 1958

Action.

The defendant, in making a return of income for the year ending April, 1952, stated that interest from his Post Office Savings Bank account amounted to £18 6s., and was assessed for tax accordingly. In fact, the interest was £51 5s. 9d., and when that was discovered an additional first assessment was made on the defendant for the amount understated, the tax on which was £14 5s. Subsequently, the Inland Revenue Commissioners, by writ dated 13th June, 1956, claimed £438 14s. 6d. for penalties, being triple the total amount of tax payable by the defendant in respect of the tax year 1952-53 plus £20, under s. 25 (3) of the Income Tax Act, 1952, which provides: "A person who neglects or refuses to deliver . . . a true and correct . . . return which he is required under the preceding provisions of this chapter to deliver shall—(a) if proceeded against by action in any court, forfeit the sum of £20 and treble the tax which he ought to be charged under this Act; . . ."

DIPLOCK, J., said that the Crown contended that the words "tax which he ought to be charged under this Act" meant the total amount payable by the person chargeable for the year of assessment. But it was to be noted that the expression was "ought to be charged" and not "ought to have been charged."

It seemed to his lordship that a reasonable meaning of the expression was the tax to which he ought to be charged, that was to say duly assessed, but to which he had not been charged or duly assessed by reason of the default. The phraseology of s. 25 (3) was to be contrasted with that of s. 48 which dealt with the penalties which could be enacted in the case of fraud and provided a penalty of "treble the amount of the charge which ought to have been made upon him." His lordship drew attention to the use of the past tense in s. 48 as contrasted with the present tense in s. 25 (3). Section 48 seemed to express in clearer and lengthier language what was intended to be conveyed by the elliptical expression in s. 25 (3). That construction of the subsection led to the difficulty in determining at what point of time one had to ascertain the amount of tax "which he ought to be charged." The answer had to be the date at which the proceedings were brought. In the present case the proceedings were started on 13th June, after the defendant had been charged with all the tax for which he was liable. There was, therefore, at the date of the proceedings no tax remaining on which he ought to be charged under the Act. On the construction which appealed to his lordship, the only amount recoverable under s. 25 (3) was the fixed penalty of £20. Judgment accordingly.

APPEARANCES: Alan Orr (Solicitor of Inland Revenue).

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

[2 W.L.R. 32]

## Probate, Divorce and Admiralty Division

### HUSBAND AND WIFE: MAINTENANCE: WHETHER ORDER PENDING SUIT AND SUBSEQUENT MAINTENANCE ORDER ONE "JUDGMENT" FOR PURPOSE OF COMMITTAL ORDER

**O'Mahoney v. O'Mahoney**

Collingwood, J. 24th November, 1958

In November, 1957, a committal order was made, suspended upon the payment, in addition to sums due under an order of April, 1957, for alimony pending suit for a wife and maintenance pending suit of two children, of further weekly sums in discharge of arrears. In March, 1958, a decree in favour of the wife having been made absolute in January, 1958, an order for maintenance was made in favour of the wife and children as from decree absolute. In September, 1958, an application was made for leave to issue the suspended committal order. At that date the husband was substantially in arrear with payments under the maintenance order. He had, in fact, paid in irregular sums a total amount which was more than sufficient to cover the sums due in discharge of the arrears under the suspended committal order for which, at all material times, he remained liable, but not if, as was the contention of counsel for the wife, the sums paid were primarily allocated to the discharge of the current order for maintenance. The registrar refused the application and referred the matter to a judge. At the hearing of the reference, letters written by the husband on the making of certain of the payments which were not before the registrar were before the court. The husband appeared in person.

COLLINGWOOD, J., said that it was to be noted that the order made on 2nd April, 1957, was limited in regard to the children in exactly the same way as in regard to the wife; it was an order to pay "pending suit." It was not, therefore, an order which continued until replaced by another order, but automatically ceased to have effect in January, 1958, when the decree was made absolute. The husband's only liability thereafter until March, 1958, was to continue the payments in discharge of the arrears. It was contended, on behalf of the judgment creditor, that it was necessary only to look at the debtor's intention as regards the payments, an intention to be derived from the amount of the payments and the letters accompanying them. But it was necessary to have regard not to his conception or misconception as to his liability, but to what his liability in law really was. It was further urged that, irrespective of the debtor's intention, both the orders, that for alimony and maintenance of children *pendente lite*, and that for permanent maintenance, were really one judgment under the Matrimonial Causes (Judgment Summons) Rules, 1952. That submission had already been dealt with. It was important to remember that the whole basis of committal under s. 5 of the Debtors Act, 1868, and the Rules of 1952 was deliberate contempt of court,

arising from a failure to pay that which the court, after inquiry as to means, was satisfied that the debtor was able to pay. It was impossible to apply a committal order to a debt due under an order for maintenance which was not in existence at the date of the making of the committal order; the registrar was, therefore,

right in the view which he took, and leave to issue an order for committal must be refused.

APPEARANCES: *A. B. Ewbank* (*J. A. H. Powell, Law Society Divorce Department*).

[Reported by Miss ELAINE JONES, Barrister-at-Law]

[2 W.L.R. 22]

## CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

### The Solicitor's Income

Sir,—The most significant passage in the interesting letter from "A Young Solicitor" is that which says "I see no reason at all why my income should not reach £6,000 per annum by the time I reach forty (assuming I live that long)." The author obviously has doubts as to whether he will live that long and his letter gives full justification for those doubts. Apart from his busy, prosperous practice, he lectures for two evenings a week at a L.C.C. College, acts as tutor for a correspondence college, is, or may become, a commissioner for oaths, and writes articles for legal periodicals. One wonders what he does in his spare time. Surely we are born into this world for a loftier motive than devoting every possible minute and second to amassing a private fortune, most of which will return to H.M. Treasury in one form or another as income tax, surtax, estate duty, etc. If at the age of twenty-eight "A Young Solicitor" can see no other ambition or use for his time, then I have grave doubts as to whether he will reach the age of forty, and if he does what an awful, worn-out, utter bore he will become. May I appeal to him to set a reasonable limit on his financial ambitions, and devote some of his leisure time to voluntary work in aid of the illiterate, the poor (even poor solicitors), the juvenile delinquents, and other worthy causes, because when the time comes for him to leave this world the final judgment upon his efforts will not be related to his financial successes, but to his voluntary achievements. He might consider handing over his lecturing and his tutorial work to a poor, struggling, not so young solicitor, like myself.

South Woodford,  
London, E.18.

ROLAND E. SMITH.

Sir,—While offering "A Young Solicitor" congratulations and good wishes on the success which he has achieved in his own career, it is only fair to the profession generally to point out that not many have enjoyed the generous treatment which he has received.

I think that it is rare for shares in goodwill to be passed on to junior partners at less than two years' purchase; and the liability to meet the capital purchase money out of taxed income can be a heavy burden in the early years of practice.

The London County Council, again, appears to be more generous than other county councils, in providing our friend with "another £6 at least" for lectures on two evenings a week. The county council here offers 17s. 6d. per hour, inclusive of all expenses.

Isle of Wight.

E. A. McCULLAGH.

### Interpreting for the Deaf

Sir,—Page 884 of your issue dated 13th December, 1958, refers to the service provided by the National Institution for the Deaf in the courts on behalf of the deaf and dumb. It may be of assistance to your readers if details of the services provided by the Royal Association in Aid of the Deaf and Dumb are made known through your columns.

The Royal Association works in the London, Middlesex, Surrey, Essex and West Kent Areas, in each of which expert interpreters are available to assist solicitors in the preparation of cases concerning the deaf and dumb, and the magistrates and police in the courts. The Association employs Mr. D. Gillies, 48 Saxon Road, Thornton Heath, S.E.25 (Telephone: THORnton Heath 5948), exclusively for this kind of work. No charge is made for Mr. Gillies's services, either in attendance at solicitors' offices, or when called to interpret in the court. The Committee of the Royal Association maintains this free service in order that the

problems arising between the deaf and the hearing may be fully understood by both sides.

Where the services of the official interpreter cannot be obtained, reference may be made to the undermentioned at the addresses stated:—

1. The Rev. A. F. Mackenzie, Chaplain Superintendent, 22 Ellesmere Road, Dollis Hill, N.W.10. (Telephone: GLAdstone 4964).
2. The Rev. J. Lyon-Shaw, 55 Norfolk Square, Paddington, W.2. (Telephone: PADddington 5468.)
3. Mr. M. F. Browning, 27 Old Oak Road, Acton, W.3. (Telephone: SHEpherds Bush 2209.)
4. The Rev. S. Barnett, 258 Green Lanes, N.4. (Telephone: STAmford Hill 1937.)
5. The Rev. R. W. Cade, 9 Tennyson Road, S.E.25. (Telephone: LIVingstone 1590.)
6. The Rev. L. O. Kent, 180 Forest Hill Road, S.E.23. (Telephone: FORest Hill 1828 and TIDeway 5580.)
7. The Rev. J. J. Hesketh, 30 Harpenden Road, South Wanstead, E.12. (Telephone: WANstead 0903.)
8. The Rev. B. B. Morgan, 19 Ellis Avenue, Onslow Village, Guildford, Surrey.
9. Mr. E. R. Collins, 49 Orpin Road, South Merstham, Near Redhill, Surrey.
10. Mr. R. J. Lewis, 90 Review Road, N.W.2. (Telephone: GLAdstone 5020.)
11. Essex (Chelmsford, Southend, Harlow, Romford, Colchester and Braintree), The Rev. G. Watson, 117A Rainsford Road, Chelmsford, Essex. (Telephone: CHElmsford 4348.)
12. Rochester (Medway Towns, Tonbridge, Tunbridge Wells, Gravesend), Mr. J. H. K. Beighton, 25 Allison Avenue, Gillingham, Kent. (Telephone: GILLingham 58056.)

It also may be of interest if, apart from the above spiritual and general welfare services available, your readers are aware that the Association also maintains specialist workers amongst those who are both blind and deaf and dumb, those in mental hospitals and an employment agency.

If there is any further information which would assist your readers, the undersigned will most gladly offer assistance.

Yours faithfully,

B. R. F. MACNAV,  
General Secretary,

55 Norfolk Square,  
London, W.2.

Royal Association in Aid of  
the Deaf and Dumb.

### Volumes of Law Reports Wanted

Sir,—I should be greatly obliged to receive any information which any of your readers can provide concerning any one of the volumes set out hereunder which are missing from my library of law reports:—

- 85, English Reports.
- 1875, Vol. 9, Part I, Statutes.
- 1883-4, 9 Appeal Cases.
- 1899, 1 Queen's Bench.
- 1901, 2 King's Bench.

I shall be happy to make a reasonable reward to any person who can restore any of the missing reports to me.

Alternatively, I should be glad to know whether any of your readers are in a position to offer for sale any or all of the volumes referred to.

H. V. LLOYD-JONES.

Temple,  
London, E.C.4.

## NEW YEAR LEGAL HONOURS

### KNIGHTS BACHELOR

STANLEY EUGENE GOMES, Esq., Chief Justice, Trinidad and Tobago. Called by Gray's Inn, 1924.

EDWARD MILNER HOLLAND, Esq., C.B.E., Q.C., Chairman of the Bar Council; Attorney-General, Duchy of Lancaster. Called by the Inner Temple, 1927, and took silk 1948.

HUBERT HULL, Esq., C.B.E., President of the Transport Tribunal. Called by the Inner Temple, 1910.

The Honourable JAMES DOUGLAS HUTCHINSON, Senior Puisne Judge of the Supreme Court, New Zealand.

DOUGLAS WILLIAM LOGAN, Esq., Principal of the University of London. Called by the Middle Temple, 1937.

JAMES BEVERIDGE THOMSON, Esq., Chief Justice, Federation of Malaya. Called by the Middle Temple, 1929.

THOMAS CROWE SPENSER WILKINSON, Esq., Chief Justice, Nyasaland. Called by Gray's Inn, 1925.

### ORDER OF THE BATH

#### C.B.

CHARLES HAROLD CHORLEY, Esq., Parliamentary Counsel. Called by the Inner Temple, 1934.

DENIS WILLIAM DOBSON, Esq., O.B.E., Deputy Clerk of the Crown in Chancery, Lord Chancellor's Office. Called by the Middle Temple, 1951.

### ORDER OF THE BRITISH EMPIRE

#### K.B.E.

The Rt. Hon. STORMONT MANCROFT SAMUEL, BARON MANCROFT, M.B.E., T.D. Called by the Inner Temple, 1938.

JOSEPH SIMPSON, Esq., O.B.E., Commissioner of Police of the Metropolis. Called by Gray's Inn, 1937.

#### C.B.E.

VERNON LAWRENCE, Esq., O.B.E., Clerk of the Monmouthshire County Council. Admitted 1933.

AUSTIN CHARLES LONGLAND, Esq., Q.C., Senior Referee under the Family Allowances and Contributory Pensions Acts. Called by the Inner Temple, 1914, and took silk 1946.

EMILE FASHOLE LUKE, Esq., Puisne Judge, Sierra Leone.

LIONEL ALEXANDER WILLIAM ORR, Esq., Q.C., Attorney-General, Bahamas. Called by Gray's Inn, 1945.

RALPH RISK, Esq., M.C., lately President, Law Society of Scotland.

ERIC DAVAN WETTON, Esq., Registrar, H.M. Land Registry. Admitted 1927.

#### O.B.E.

FRANK GEORGE AXMANN, Esq., M.B.E., Chief Executive Officer, County Courts Branch, Lord Chancellor's Office.

HENRY ANGUS CLIDERO, Esq., M.C., Town Clerk, Bridgwater Borough Council. Admitted 1934.

JAMES HENRY CRAINE, Esq., Chief Clerk, Bow Street Magistrates' Court.

Colonel ALFRED CYRIL WHITWORTH HOBSON, M.C., T.D., D.L., Chairman, Birmingham National Insurance Local Appeal Tribunal. Admitted 1920.

LAWRENCE JOHN HALLAM HORNER, Esq., Assistant General Manager and Solicitor, Chamber of Shipping of the United Kingdom. Admitted 1931.

WILFRED EBENEZER JACOBS, Esq., Attorney-General, Leeward Islands. Called by Gray's Inn, 1946.

EDWARD CLAUDE SINGTON, Esq., T.D., Senior Legal Assistant, Board of Trade. Called by the Inner Temple, 1920.

ARTHUR GEORGE WILLIAM WASH, Esq., Honorary Secretary, Council of the American Memorial Chapel Fund. Admitted 1935.

#### M.B.E.

JOHN RUPERT CHARLES WALFORD, Esq., Legal Assistant, Ministry of Pensions and National Insurance.

## IN WESTMINSTER AND WHITEHALL

### STATUTORY INSTRUMENTS

**Aden Colony** (Amendment) (No. 2) Order, 1958. (S.I. 1958 No. 2185.) 5d.

**Air Force Act, 1955** (Continuation) Order, 1958. (S.I. 1958 No. 2188.) 4d.

**Army Act, 1955** (Continuation) Order, 1958. (S.I. 1958 No. 2189.) 4d.

**Carriage By Air** (Parties to Convention) (No. 2) Order, 1958. (S.I. 1958 No. 2190.) 4d.

**Coal and other Mines** (Mechanics and Electricians) (Variation) (No. 2) Regulations, 1958. (S.I. 1958 No. 2222.) 5d.

**Colonial Air Navigation** (Amendment) (No. 2) Order, 1958. (S.I. 1958 No. 2187.) 5d.

**Copyright** (International Conventions) (Amendment No. 2) Order, 1958. (S.I. 1958 No. 2184.) 5d.

**County Court** (Amendment) Rules, 1958. (S.I. 1958 No. 2226 (L.17.)) 8d. See p. 21, *ante*.

**East African Land Forces** Organisation (Amendment) Order in Council, 1958. (S.I. 1958 No. 2186.) 4d.

**East Worcestershire Water** Order, 1958. (S.I. 1958 No. 2194.) 5d.

**Exchange of Securities** (No. 5) Rules, 1958. (S.I. 1958 No. 2216.) 5d.

**Import Duties** (General) (No. 3) Order, 1958. (S.I. 1958 No. 2223.) 5d.

**Import Duties** (Temporary Exemptions) (No. 2) Order, 1958. (S.I. 1958 No. 2224.) 5d.

**Import Duties** (Temporary Exemptions) (No. 3) Order, 1958. (S.I. 1958 No. 2225.) 4d.

**International Sugar Council** (Immunities and Privileges) Order, 1958. (S.I. 1958 No. 2191.) 5d.

**Legal Aid** (Scotland) (General) (No. 4) Regulations, 1958. (S.I. 1958 No. 2199 (S.117.)) 5d.

**London Traffic** (Prescribed Routes) (Surbiton) Regulations, 1958. (S.I. 1958 No. 2193.) 4d.

**Matrimonial Proceedings** (Children) Act, 1958 (Commencement) (Scotland) Order, 1958. (S.I. 1958 No. 2165 (C.18) (S.116.)) 4d.

**Merchandise Marks** (Imported Goods) No. 4 Order, 1930, Amendment Order, 1958. (S.I. 1958 No. 2183.) 5d.

**Metropolitan Magistrates' Courts** (Domestic Proceedings) Order, 1958. (S.I. 1958 No. 2181.) 5d.

**Milford Haven** (Water Charges) Order, 1958. (S.I. 1958 No. 2171.) 4d.

**Milk and Dairies** (Channel Islands and South Devon Milk) (Scotland) Regulations, 1958. (S.I. 1958 No. 2229 (S.123.)) 5d.

**National Health Service** (Designation of Teaching Hospitals) Amendment Order, 1958. (S.I. 1958 No. 2192.) 5d.

**National Health Service** (General Dental Services) Amendment Regulations, 1958. (S.I. 1958 No. 2169.) 5d.

**National Health Service** (General Dental Services) (Scotland) Amendment (No. 2) Regulations, 1958. (S.I. 1958 No. 2219 (S.121.)) 5d.

National Health Service (General Medical and Pharmaceutical Services) (Scotland) Amendment (No. 2) Regulations, 1958. (S.I. 1958 No. 2218 (S.120).) 5d.

National Health Service (Remuneration and Conditions of Service) Regulations, 1958. (S.I. 1958 No. 2170.) 4d.

National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations, 1958. (S.I. 1958 No. 2220 (S.122).) 4d.

**Newquay and District** (Water Charges) Order, 1958. (S.I. 1958 No. 2221.) 5d.

**Pensions** Commutation Payment Regulations, 1958. (S.I. 1958 No. 2195.) 5d.

**Public Health** (Preservatives, etc., in Food) (Amendment No. 2) Regulations, 1958. (S.I. 1958 No. 2167.) 5d.

Public Health (Preservatives, etc., in Food) (Scotland) Amendment (No. 2) Regulations, 1958. (S.I. 1958 No. 2217 (S.119).) 5d.

**Purchase Tax** (No. 3) Order, 1958. (S.I. 1958 No. 2173.) 8d.

**Rate-Demands** Rules, 1958. (S.I. 1958 No. 2198.) 9d.

**Remuneration of Teachers** (Farm Institutes) Amending Order, 1958. (S.I. 1958 No. 2152.) 5d.

Remuneration of Teachers (Further Education) Amending Order, 1958. (S.I. 1958 No. 2153.) 5d.

**Retention of Cables, Mains and Drain Under and Over Highways** (County of Leicester) (No. 1) Order, 1958. (S.I. 1958 No. 2201.) 5d.

**Slaughterhouses** (Hygiene) Regulations, 1958. (S.I. 1958 No. 2168.) 8d.

**Slaughter of Animals** (Prevention of Cruelty) Regulations, 1958. (S.I. 1958 No. 2166.) 8d.

**Stopping up of Highways** (County of Buckingham) (No. 14) Order, 1958. (S.I. 1958 No. 2205.) 5d.

Stopping up of Highways (County of Devon) (No. 5) Order, 1958. (S.I. 1958 No. 2142.) 5d.

Stopping up of Highways (County of Devon) (No. 6) Order, 1958. (S.I. 1958 No. 2203.) 5d.

Stopping up of Highways (County of Hereford) (No. 2) Order, 1958. (S.I. 1958 No. 2202.) 5d.

Stopping up of Highways (County of Lancaster) (No. 35) Order, 1958. (S.I. 1958 No. 2155.) 5d.

Stopping up of Highways (County of Lancaster) (No. 36) Order, 1958. (S.I. 1958 No. 2156.) 5d.

Stopping up of Highways (London) (No. 53) Order, 1958. (S.I. 1958 No. 2206.) 5d.

Stopping up of Highways (London) (No. 54) Order, 1958. (S.I. 1958 No. 2207.) 5d.

Stopping up of Highways (County of Northampton) (No. 13) Order, 1958. (S.I. 1958 No. 2143.) 5d.

Stopping up of Highways (County Borough of Southend-on-Sea) (No. 1) Order, 1958. (S.I. 1958 No. 2144.) 5d.

Stopping up of Highways (County of Suffolk, East) (No. 3) Order, 1958. (S.I. 1958 No. 2208.) 5d.

Stopping up of Highways (County Borough of West Ham) (No. 1) Order, 1958. (S.I. 1958 No. 2145.) 5d.

Stopping up of Highways (County of York, North Riding) (No. 8) Order, 1958. (S.I. 1958 No. 2204.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 24) Order, 1958. (S.I. 1958 No. 2209.) 5d.

**Sunderland and South Shields** Water (No. 2) Order, 1958. (S.I. 1958 No. 2233.) 5d.

**Superannuation** (Local Government and Northern Ireland) Interchange (Scotland) Amendment Rules, 1958. (S.I. 1958 No. 2200 (S.118).) 7d.

**Town and Country Planning** (County Borough of Hastings) Development Order, 1958. (S.I. 1958 No. 2151.) 6d.

**Wages Regulation** (Perambulator and Invalid Carriage) Order, 1958. (S.I. 1958 No. 2215.) 8d.

## NOTES AND NEWS

### Miscellaneous

The Lord Chancellor has ordered that, as from 1st January, His Honour Judge Kennan cease to be the judge for the districts of the Otley and Wakefield County Courts, and His Honour Judge Ould be the judge for those districts in addition to the districts for which he was already the judge.

### DEVELOPMENT PLANS

#### PROPOSALS FOR ALTERATIONS OR ADDITIONS SUBMITTED TO MINISTER

Title of plan	Districts affected	Date of notice	Last date for objections or representations
County Borough of Brighton	County Borough of Brighton	22nd December, 1958	13th February, 1959
City and County Borough of Carlisle	Willow Holme	19th December, 1958	5th February, 1959
Cornwall County Council	Falmouth Borough	19th December, 1958	31st January, 1959
East Sussex County Council	East Grinstead Urban District ; Uckfield Rural District	12th December, 1958	31st January, 1959

### APPROVAL BY MINISTER

Title of plan	Date of notice	Last date for applications to High Court
Breconshire County Council	18th December, 1958	6 weeks from 23rd December, 1958
Hertfordshire County Council	30th December, 1958	6 weeks from 30th December, 1958
Kent County Council	19th December, 1958	6 weeks from 19th December, 1958

Lord Denning, Lord Justice of Appeal, and Mr. Gerald Gardiner, Q.C., are visiting India under the auspices of the British Council to lecture and have discussions with Indian lawyers. They are also members of the British delegation at the Conference on the Rule of Law being held by the International Commission of Jurists in Delhi from 4th to 10th January. Other members of the delegation are Mr. Justice Devlin, Sir David Cairns, Q.C., Mr. John Foster, Q.C., M.P., Professor C. J. Hamson and Mr. Elwyn Jones, Q.C., M.P. Mr. Gardiner left on 21st December and was in Bombay over Christmas. On 23rd December he addressed the probation conference held there by the Tata Institute of Social Sciences. Lord Denning left on 26th December. His tour includes Bombay and Allahabad, where he was to be the guest of Mr. Chief Justice Mootham of Uttar Pradesh.

The Law Society will hold a Young Members Group dance on Friday, 23rd January, 1959, at 8.30 p.m. to 1 a.m., at The Law Society's Hall, Chancery Lane, London, W.C.2. Tickets, price 10s. 6d. single, and 17s. 6d. double, may be obtained from The Law Society's Hall by post or personal application at the Cashier's Department before 12th January, 1959. On or after that date, tickets, if available, may be obtained upon personal application only and will be priced 12s. 6d. single and 1 guinea double. Although tickets will be sold only to those members who are under the age of 36, there will be no restriction on the purchase of tickets for guests.

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